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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFFREY MCELROY,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, a municipal corporation; and
DOES 1-50, inclusive.

Defendants.

Case No.: 19-cv-05528-JSC

JOINT CASE MANAGEMENT STATEMENT

Hearing Date: March 19, 2019
Time: 1:30 p.m.
Place: Courtroom F, 15th Floor
San Francisco, CA 94102

Trial Date: January 11, 2021

1 The parties to the above-entitled action jointly submit this JOINT CASE MANAGEMENT
 2 STATEMENT pursuant to the Standing Order for All Judges of the Northern District of California
 3 dated November 1, 2018 and Civil Local Rule 16-9.

4 1. Jurisdiction and Service:

5 The parties agree that his Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and
 6 1343. Defendants responded to the complaint on October 11, 2019. The parties agree that venue is
 7 proper under 28 U.S.C. §§ 1391(b)(1) and (b)(2).

8 2. Facts:

9 a. Plaintiff:

10 On June 20, 2018 at approximately 4:00 p.m., two San Francisco Police Officers detained
 11 Plaintiff Jeffrey McElroy him for allegedly riding his bicycle on the sidewalk nearby 16th Street and
 12 Mission in San Francisco, CA. Rather than just issuing him a citation and moving on, Officer Marcic
 13 and his partner procured this petty infraction as a pretense to harass Mr. McElroy. Based on the
 14 allegation that Mr. McElroy was being uncompliant, SFPD officers searched his person and pretended
 15 to not find the wallet bulging from McElroy's back pocket so they could allegedly search his backpack
 16 for identification.

17 While officers searched the backpack, McElroy feared the officers' suspicious behavior and
 18 ran away. Officers cornered McElroy in a garage and ordered him to come out. McElroy came out and
 19 cowered behind a folding chair. Officer Marcic punched McElroy mercilessly in the face and head
 20 even after McElroy had surrendered, both his hands were visible and covering his head. Although
 21 Officer Marcic wrote in his sworn police report that McElroy was resisting, a neighbor who watched
 22 from the window testified at the preliminary hearing that McElroy offered no resistance. Afterwards,
 23 officers fist-bumped and laughed.

24 The SFDA filed criminal charges against McElroy. At the preliminary hearing evidence of the
 25 body camera footage was introduced, which resulted in the criminal charges being tossed out. Judge
 26 Stephen Murphy had "concerns about Officer Marcic's credibility, and particularly in light of the
 27
 28

video.”¹ Afterwards, the public defender filed a complaint with the San Francisco Department of Police Accountability (“SFDPA”), which conducted an investigation into the incident.

As reported by the Mission Local news, SFDPA investigators concluded by a preponderance of the evidence that Officer Marcic “lied under oath about the subject’s initial non-compliance and wrote an inaccurate and incomplete incident report” and that Officer Marcic used excessive force. (Id.)

Officer Marcic is the same officer who, a week prior to beating up Mr. McElroy, responded to a gay couple that had reported being victimized and Officer Marcic made a homophobic comment to them.²

b. Defendants: On June 20, 2018, Officer Marcic and Hayes were on patrol in a marked patrol car wearing full police uniforms on Mission Street near 16th Street when they saw Jeffrey McElroy riding a bicycle on the sidewalk. Mr. McElroy was wearing a backpack. The officers detained Mr. McElroy for violating the City ordinance prohibiting adults from riding bicycles on the sidewalk. Given the number of violent crimes in the area of 16th and Mission, for officer safety Officer Marcic pat searched Mr. McElroy for weapons. No weapon was found when patting the exterior of Mr. McElroy’s clothing. Next, the officers sat Mr. McElroy on the sidewalk and asked him for his name and birthdate. Mr. McElroy provided the officers with three false identities. The officers were unable to confirm Mr. McElroy’s identity, and were aware that he lied at least twice about his identity. In an effort to confirm his identity, Officer Sterling announced that we was going to look for identification in the plaintiff’s backpack. The moment Officer Sterling opened the backpack, he saw a semi-automatic handgun. The moment Officer Sterling opened the backpack, Mr. McElroy jumped to his feet and sprinted away. The officers gave chase.

The foot pursuit led the officers from Mission onto 15th Street, and then into Natoma Alley. On Natoma, Mr. McElroy ran into an open garage of a residence. Unaware of what weapons might be available to Mr. McElroy in the garage, the officers ordered plaintiff to get on the ground at gunpoint.

¹ “ SFPD officer accused of lying under oath after severely beating bicyclist in SF’s Mission”
<https://missionlocal.org/2019/10/sfpd-officer-lied-under-oath-after-severely-beating-bicyclist-in-sfs-mission/>

² “Castro bar owner spit on, called 'faggot' by car driver”
<https://www.ebar.com/news/news/261296>

1 Instead, Mr. McElroy came out of the garage brandishing a folding metal chair. The officers holstered
2 their guns and drew their batons in defense. Mr. McElroy was then cornered between the two officers,
3 a parked car, and the wall of the residence when he slipped and fell onto the ground. While Mr.
4 McElroy was on the ground, Officer Marcic attempted to get physical control of Mr. McElroy, who
5 refused to submit to arrest. Officer Marcic struck Mr. McElroy with his fist six times and Officer
6 Sterling struck Mr. McElroy in the leg with his baton to obtain compliance and end Mr. McElroy's
7 resistance so he could be put in handcuffs. The use of force was captured on body worn video and
8 properly documented. Mr. McElroy was arrested.

9 The DPA findings related to Officer Marcic's conduct in connection with the arrest of Mr.
10 McElroy have been challenged and there has been no final determination at this time. The alleged
11 comment attributed to Officer Marcic reported in the Bay Area Reporter (BAR) are disputed and have
12 no bearing on the arrest of Mr. McElroy.

13 3. Legal Issues:

14 The primary legal issues are whether: (1) there is municipal liability, *Monell v. Department of*
15 *Social Servs.*, 436 U.S. 658, 98 S.Ct. 2018 (1978); (2) if there was a violation of Plaintiff's Fourth
16 Amendment rights; and (3) the officers are entitled to qualified immunity, *Harlow v. Fitzgerald*, 457
17 U.S. 800, 102 S.Ct. 2727 (1982).

18 4. Motions:

19 Defendant plans to file a motion for summary judgment.

20 Plaintiff will consider a motion for partial adjudication.

21 5. Amendment of Pleadings:

22 The deadline for filing a motion to amend the pleading was February 6, 2020. [ECF 15] The
23 Plaintiff filed a First Amended Complaint and the named defendants have filed an Answer to that
24 amended pleading.

25 6. Evidence Preservation:

26 The parties have taken steps to collect and preserve evidence related to the issues presented by
27 this action.

1 7. Disclosures:

2 The parties have exchanged initial disclosures.

3 8. Discovery:

4 Plaintiff

5 Plaintiff served document production requests and is awaiting the disclosures.

6 Defendant

7 Defendant served interrogatories and document production requests. Defendant has initiated
8 the meet and confer process regarding deficiencies in the unverified responses provided. The
9 deposition of Plaintiff has been noticed for March 25, 2020. If necessary, the defendant will meet and
10 confer with plaintiff and seek any necessary Court orders for independent medical examinations.

11 9. Class Actions:

12 This is not a class action.

13 10. Related Cases:

14 There are no related civil cases.

15 11. Relief:

16 Plaintiff

17 Plaintiff seeks a judgment in his favor. Plaintiff seeks monetary damages for past and future
18 emotional distress, medical costs and loss of wages. Plaintiff seeks injunctive relief. Plaintiff also
19 seeks reasonable attorney fees and costs.

20 Defendant

21 Defendant seeks a judgment in its favor and related costs and fees as appropriate.

22 12. Settlement and ADR:

23 The parties participated in a settlement conference with Magistrate Judge Cousins. The case
24 did not settle.

25 13. Consent to Magistrate Judge For All Purposes:

26 The parties consent to a Magistrate Judge to conduct all further proceedings including trial and
27 entry of judgment.

1 14. Other References:

2 The parties do not believe this case is suitable for reference to binding arbitration, a special
3 master, or the Judicial Panel on Multidistrict Litigation.

4 15. Narrowing of Issues:

5 Plaintiff

6 Plaintiff will seek to narrow issues through motion for summary judgment or partial summary
7 judgment following discovery. Plaintiff reserves the right to seek bifurcation of issues if the need
8 arises.

9 Defendant

10 Defendant will seek to narrow issues through motion for summary judgment or partial
11 summary judgment following discovery. Defendant reserves the right to seek bifurcation of issues if
12 the need arises.

13 16. Expedited Trial Procedure:

14 The parties do not believe that an expedited schedule is appropriate.

15 17. Scheduling:

16 The parties do not seek to amend the pre-trial scheduling order at this time. [ECF 15]

17 18. Trial:

18 The parties request a trial by jury and expect the trial to last approximately six (6) court days.

19 19. Disclosure of Non-party Interested Entities or Persons:

20 No persons, firms, partnerships, corporations (including parent corporations) or other entities
21 are known by the parties to have either: (i) a financial interest in the subject matter in controversy or in
22 a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the
23 outcome of the proceeding.

24 By the terms of Rule 3-16, the City is exempt from the certification requirement.

25 20. Professional Conduct:

26 All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct
27 for the Northern District of California.

21. Such other matters as may facilitate the just, speedy and inexpensive disposition of this
matter.

None

Dated: 3-12-2020

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Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

Dated: 3-12-2020

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